DOCUMENT RESUME

ED 201 895 CE 029 049

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TITLE Legal Aspects of the Marketplace.
INSTITUTION Northern Virginia Community Coll., Annandale.
SPONS AGENCY Office of Education (DHEW), Washington, D.C.
PUB DATE 78
NOTE 56p.; For related documents see CE 028 469-474 and CE 029 045-051.

EDRS PRICE MF01/PC03 Plus Postage.
DESCRIPTORS Adult Education; Audiovisual Aids; Audiovisual Communications; *Audiovisual Instruction; *Consumer Economics; *Consumer Education; *Consumer Protection; Credit (Finance); *Laws; Marketing; Speech Communication; Volunteer Training
IDENTIFIERS Warranties

ABSTRACT

This module is one of a set of seven prepared in conjunction with the Title I "Project to Train Volunteer Leaders to Conduct Consumer Education Courses." It is designed to be a basic text for use in making a one-hour presentation on legal aspects of the marketplace. Through use of the attached bibliography, a more in-depth knowledge can be acquired and the presentation expanded. For shorter presentations, portions of the text can be extracted. A slide set keyed to the text accompanies each module. (An illustration for each slide is provided.) The module contains a script that can be read verbatim or developed further by use of personal background and research. Topics in the script include consumer rights, supply and demand, credit information, debt collection, warranties, and market schemes. A multiple-choice/true-false quiz is appended. (CT)

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LEGAL ASPECTS OF THE MARKETPLACE

Jacqueline R. Schmitt, author

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CONSUMER EDUCATION PROJECT
Project to Train Volunteer Leaders to Conduct
Consumer Education Courses
Title I, Higher Education Act of 1965
Grantee Institution: Northern Virginia Community College
1978

CE 029 049

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Consumer Education Project

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Volunteers throughout the Northern Virginia area have been trained to give presentations on the following six consumer-related topics for which modules have been developed:

Rights and Responsibilities in the Marketplace
How to Buy Goods and Services
Personal Money Management
Legal Aspects of the Marketplace
Credit
Sources of Consumer Assistance

The services of these volunteers are available to citizen groups, schools, and organizations through the state and local consumer affairs offices listed in the paragraph below. The purpose of this program is to increase consumer awareness and raise the level of individual consumer competency among our citizens.

The grant establishing this project was awarded to Northern Virginia Community College by the State Agency for Title I under the Higher Education Act of 1965. The program, however, is a co-operative effort involving the Consortium for Continuing Higher Education in Northern Virginia, George Mason University, the University of Virginia, Virginia Polytechnic Institute and State University, as well as the Virginia Office of Consumer Affairs, the Alexandria Office of Consumer Affairs, the Arlington County Office of Consumer Affairs, the Fairfax County Department of Consumer Affairs, and the Prince William County Office of Consumer Affairs.

For additional information, call or write:

Consumer Education Project
c/o Virginia State Office of Consumer Affairs
3016 Williams Drive
Fairfax, Virginia 22031
Telephone: 573-1286

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LEGAL ASPECTS OF THE MARKETPLACE

VOLUNTEER LEADER'S GUIDE

LEGAL ASPECTS OF THE MARKETPLACE

Introduction

This guide is intended to provide a framework around which you can build your presentation. While it is complete enough for you to read verbatim and make a passable talk on legal aspects of the marketplace, your presentation will be much more interesting if you add to it from your own background and research. A selected bibliography is provided for your use in researching your subject and expanding this guide. You should keep abreast of new developments in legal aspects of the marketplace and incorporate them in your presentation when you can.

Pre-presentation Arrangements

Check the facility in which your presentation is to be made to insure that:

1. Seating is adequate and as comfortable as possible.
2. All audio-visual equipment and materials are present and in proper working order.
3. Lighting and projection equipment operate properly.
4. You know where the switches for lights and electrical outlets are, and how they work.
5. Handout materials are available in sufficient quantities for the prospective audience.
6. Others involved in the presentation, either as technicians or guest speakers, know how they fit into the presentation schedule.

Presentation Outline

I. TITLE: Legal Aspects of the Marketplace

II. OBJECTIVES: Upon completion of this seminar, participants will be able to:

A. Describe the current status of consumers in the marketplace.

B. Explain rudimentary marketplace economics.

C. State the essence of some of the major laws and regulations affecting consumers in the marketplace.

D. Describe some of the more common fraudulent or deceptive market schemes used to victimize consumers.

III. LENGTH: 1 hour (This time may be increased or decreased according to the needs of the audience, your ability as an instructor and the time available.)

IV. AUDIO-VISUAL AIDS:

A. Slide set "Legal Aspects of the Marketplace" consisting of 35 slides.

B. Thirty-five millimeter Carousel projector.

C. Chalkboard, chalk and eraser.

V. TEACHING PROCEDURE:

Note: In the following material, instructions are single-spaced and the text of the presentation is double-spaced.

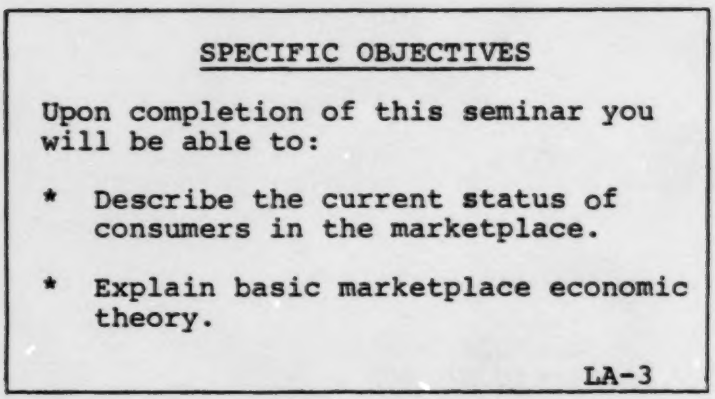
Special Instructions	Instructor Reference
Write your name on the chalkboard	A. Introduction
Turn on slide projector Show slide LA-1 Project Slide	LEGAL ASPECTS OF THE MARKETPLACE Consumer Education Project PROJECT TO TRAIN VOLUNTEER LEADERS TO CONDUCT CONSUMER EDUCATION COURSES--TITLE I, HIGHER EDUCATION ACT OF 1965 Grantee Institution--Northern Virginia Community College LA-1
Show slide LA-2 Legal Aspects of the Marketplace	LEGAL ASPECTS OF THE MARKETPLACE * Current status of consumers * Marketplace economics * Major laws and regulations * Fraudulent schemes LA-2

1. Introduce yourself and give the title of your presentation. If the format of your presentation is to be a discussion and the audience is small enough, you may want to conduct self-introductions. If you do, you should ask each participant to give his name and a little information about his background.

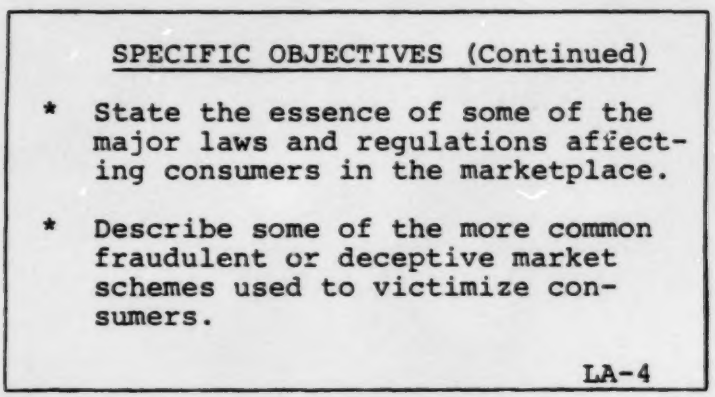
2. Briefly outline your qualifications to discuss this particular subject.

3. Explain the importance of knowing the legal aspects of the marketplace for consumers in general and for the group you are addressing in particular.

Show slide LA-3
Specific Objectives


SPECIFIC OBJECTIVES
Upon completion of this seminar you will be able to:
* Describe the current status of consumers in the marketplace.
* Explain basic marketplace economic theory.
LA-3

Show slide LA-4
Specific Objectives
(Continued)


SPECIFIC OBJECTIVES (Continued)
* State the essence of some of the major laws and regulations affecting consumers in the marketplace.
* Describe some of the more common fraudulent or deceptive market schemes used to victimize consumers.
LA-4

4. State the specific objectives of your presentation in terms of what the participants will be able to do upon its completion.

5. Explain any evaluation procedure you plan to use to measure accomplishment of these objectives. The procedure you use should be non-threatening to the participants and designed to measure your effectiveness as a presenter rather than their proficiency as learners. If you wish to use a quiz to summarize your presentation, a sample is provided at the end of the module.

6. Set the tone for your presentation.

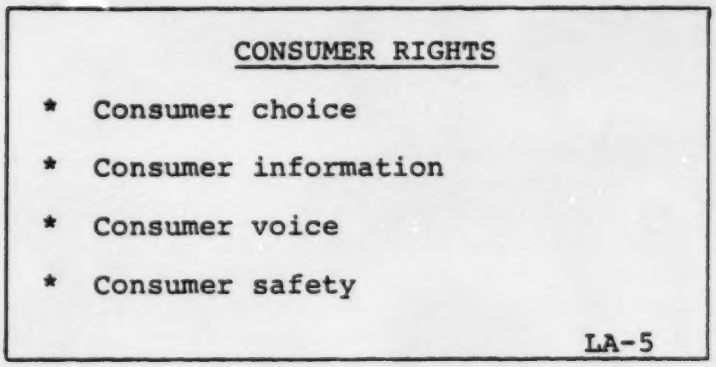
a. Encourage questions and discussion.

b. Explain the availability of handouts and how they will be distributed.

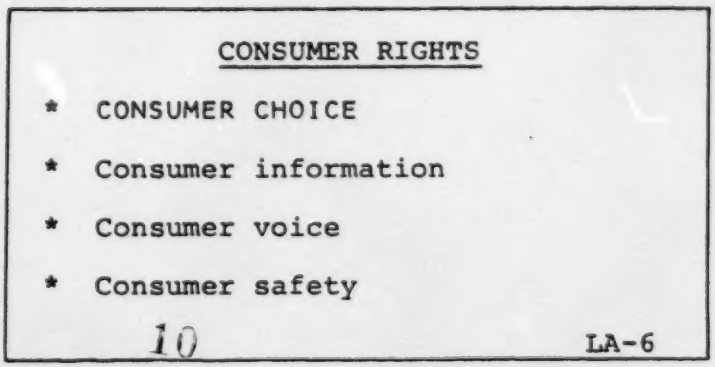
c. Tell whether or not notetaking is desirable.

B. Presentation

Show slide LA-5
Consumer Rights



Show slide LA-6
Consumer Rights -
Consumer Choice



1. Laissez-faire or free market economics theorizes that business firms freely competing with each other should determine what is offered to consumers. If this theory were correct, the consumer's choices would be a function of what they could economically afford and would be governed by physical resources--time and space. However, much of consumer legislation is toward control of what business firms are allowed to offer to consumers. Justification for this is the feeling that large companies have an unfair advantage over consumers and that they can act without regard to consumer interests. Consumerist policies have stressed: (1) that consumers ought to be forced to do what is "best" for them by government removal of certain products, or (2) that consumers should be educated to make better decisions. As a consequence of consumer group pressure, government action has resulted in the banning of some products considered unsafe. This program is part of a growing effort to educate and inform consumers.

Show slide LA-7
Consumer Rights -
Consumer Information

CONSUMER RIGHTS

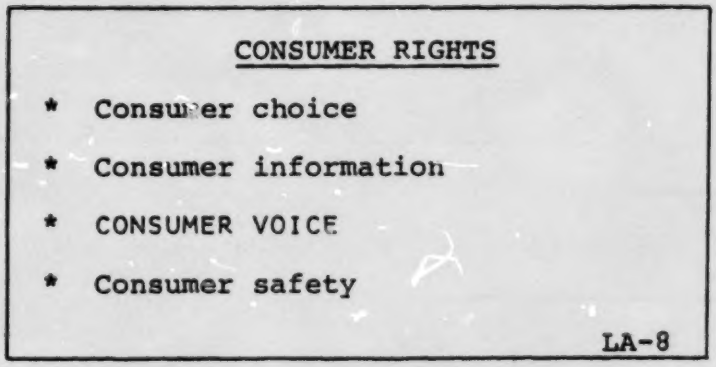
* Consumer Choice
* CONSUMER INFORMATION
* Consumer voice
* Consumer safety

LA-7

2. The right to be informed is described as the right of consumers to be protected from fraudulent, deceptive or misleading information. Some consumer advocates argue that advertising tends to deceive consumers causing them to want goods and services that are not beneficial to them. According to this theory, consumers are fraudulently persuaded to buy goods or contract for services by personal selling, advertising, and other sophisticated marketing techniques. The reaction of regulators has been to require standardization of terms so that they will have the same meaning to all consumers as in the Truth in Lending Act; or to provide time for the consumer to think and become informed before making a purchase as stipulated in

the Rule on the Cooling Off Period for Door-to-Door Sales. According to the Rule, any sale to a consumer made by a door-to-door salesman in which the sum involved is twenty-five dollars or more can be cancelled during a three-day cooling off period. The salesman must inform the consumer of that fact.

Show slide LA-8
Consumer Rights -
Consumer Voice



3. Historically, the voice most often heard during the formulation of regulatory legislation for the benefit of consumers has been that of big business. Business can and does afford intense lobbying effort on matters of legislation that affect their profits and growth. Today, however, the voice of the consumer is being heard more often through public participation in rule making, consumer complaints, and a policy of open meetings in government agencies. Public participation

in rule making enables consumers to come forward and, in an informal setting, give testimony for or against a particular rule. By this means, the rules promulgated contain consumer input. Attendance at open meetings allows consumers to see "first hand" how specific agencies think and work. Often special meetings are arranged so that consumer groups can meet and present ideas and petitions. Complaints from consumers are an important major information base used for both rule-making and enforcement activities.

a. Complaining is important because government agencies tend to lose touch with the problems consumers face daily in the marketplace. Consumer complaints provide a link between consumers and such agencies. A complaint to a federal agency will seldom bring direct action for an individual consumer. That kind of complaint is best served by local consumer offices and other agencies. But, a number of complaints from a variety of consumers can trigger federal action in the form of an investigation of the offending company or

the formulation of a rule to stop a nation-wide deceptive practice. A complaint to a federal agency is a public interest gesture that is very important to the agency in its efforts to identify consumer problems.

b. Complaining to a local consumer affairs office or state attorney general's office may bring a more direct resolution of a consumer's private dispute. It is important to remember that successful state action does not preclude federal action. If consumers in several states are being injured, it is quite possible that federal action would follow.

Show slide LA-9
Consumer Rights -
Consumer Safety

CONSUMER RIGHTS

* Consumer choice
* Consumer information
* Consumer voice
* CONSUMER SAFETY

LA-9

4. American consumers have come to expect certain levels of performance and safety in the products they buy. When these levels are not reached, consumers complain, file class action

suits, and push for government regulation geared to safe and acceptable performance.

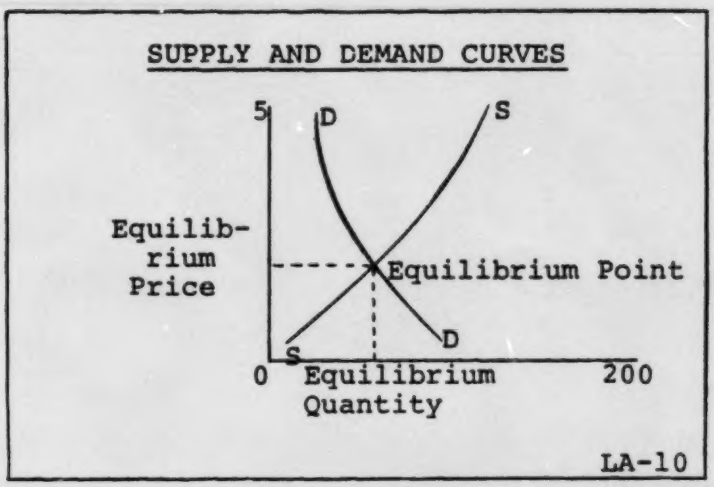
a. A certain amount of risk is assumed by the consumer in using any product. Many fail to realize that they buy a risk factor with the product. Manufacturers do have a legal responsibility to evaluate the inherent risks in their products and inform consumers. Example: Cigarettes may be hazardous to your health.

b. The ideal of complete safety may not be economically feasible. Technically, many products can be made 100% safe, but only at exhorbitant cost. Products made completely safe could cost more than the intended consumer is willing or able to pay. Example: Are consumers better off with a 100% safe car (passengers fully cushioned) they can't afford, or a reasonably safe car that they can afford?

c. Many courts have held that consumers injured by a product as a result of manufacturer's error have a cause for action. Consumers may also

have a cause for action if injured while misusing a product if they were not warned of the consequences of such misuse. Some courts and attorneys have held that manufacturers are obligated to anticipate possible misuse of a product and warn consumers accordingly. When manufacturers do warn consumers, they are then protected against judgement if willful misuse of a product causes injury.

Show slide LA-10
Supply and Demand Curves



5. Although the choice and the quality of what is produced is now often regulated for the benefit of the consumer, the quantity of a product available at a given price is a function of the law of supply and demand.

a. A seller must be able to supply a product at a profit or he will

not survive in the marketplace. The consumer must be willing to buy at a given price or there will be no demand for the product.

1) Market supply is the price/quantity relationship describing the total amount that all sellers in a market will supply at each price.

2) Market demand is the price/quantity relationship which summarizes the amount of a product buyers in the market are willing to buy at each possible price.

b. The quantity supplied of a good varies directly with its price while the quantity of a good demanded varies inversely with its price.

c. When supply and demand curves are plotted on the same co-ordinate axes, their intersection determines the equilibrium market price and quantity. Any price above the equilibrium level results in the quantity supplied exceeding the quantity demanded, thereby driving the price downward. Any price below the equilibrium level results in the quantity demanded exceeding the quantity supplied, which drives the price up.

d. Elasticity, as the term is used in economics, is the ratio of the percentage of change in quantity (supplied or demanded) to the percentage of change in price.

1) An elastic demand exists when the quantity of a good or service demanded responds significantly to a change in price. Example: Price goes up causing consumers to stop buying. Demand is elastic--luxury.

2) Inelastic demand means that the quantity of a good demanded remains constant in spite of price changes. Example: Consumers buy at any price--necessities.

3) Looking at product elasticity is useful to predict the responsiveness of consumers to changes in the price of a particular good or service. The degree of elasticity is a function of:

a) physical or social need for the product (necessity);

b) the availability of substitutes;

c) perception of the relative cost of the product as compared to others (luxury or not); and

d) time.

6. Many of the laws passed at the federal level for the benefit of consumers have dealt with money market rather than the marketing of products. Extensive use of credit by consumers has led to the regulation of credit, credit information, and billing practices.

Show slide LA-11
Credit Information

CREDIT INFORMATION

* The dollar amount of the loan or purchase
* The dollar amount of the finance charge
* The amount of the finance charge expressed as an annual percentage rate (APR)

LA-11

Show slide LA-12
Credit Information
(Continued)

CREDIT INFORMATION (Continued)

* All charges must be itemized regardless of whether they are included in the finance charge
* The deferred payment price of the item purchased
* The total payment

LA-12

a. The Truth in Lending Act is designed to insure that consumers know the true cost of credit. Merchants who extend credit to consumers are required to disclose in writing in a clear and conspicuous manner the cost of credit. The disclosure must include the dollar amount of the purchase or loan, the dollar amount of the financial charge, the finance charges as an annual percentage rate (APR), an itemized list of all charges, the deferred payment price and the total payment.

1) Usually any expense that would not have been incurred if the consumer paid cash must be considered a finance charge and should be included in calculating the APR. This includes carring charges; investigation fees; service charges; points; finders fees and interest and, under certain conditions, insurance charges. Charges that are at the consumer's option such as insurance are not required to be included in the APR. However, if at the time of signing the seller <u>requires</u> insurance, it must then be included in the APR.

2) In open-end charge accounts and revolving charge accounts, the merchant is only required to state the annual percentage rate, but he must state it at annual rate rather than a monthly rate.

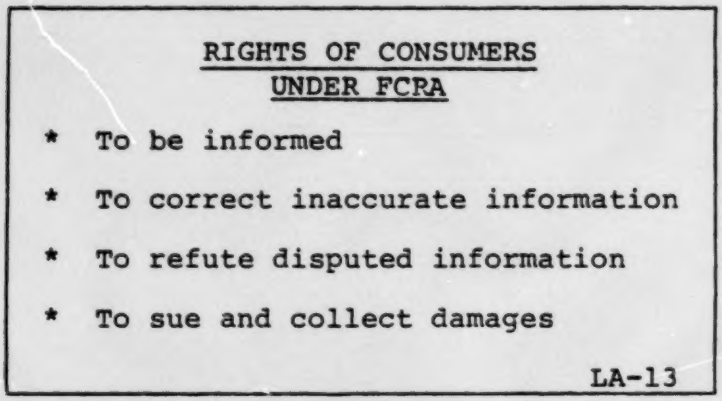
3) Under the Truth in Lending Act, a three-day cooling-off period is provided to give the consumer a chance to change his/her mind on any contract which creates a lien on his/her home. Contracts which normally create such liens include home repair and improvement agreements and debt consolidation arrangements. The law requires that the homeowner be advised that such a contract may be rescinded at any time and for any reason until midnight of the third business day following the signing of the contract. The notice of the right of rescission must be in writing. If the homeowner exercises the right of rescission, he/she is entitled to the return of any down payment and is not liable for any finance or security charges.

4) The act also prohibits lenders from advertising down payments

or installments unless the creditor usually arranges such terms and all the details of the credit arrangement are advertised, including the APR and the number of installments. However, <u>just</u> the APR can be advertized. Once more details are given the whole story must be told.

b. The Fair Credit Reporting Act (FCRA) is designed to protect consumers from the circulation of inaccurate or obsolete personal credit information and to insure consumers against abuses by consumer credit reporting agencies.

Show slide LA-13
Right of Consumers
Under FCRA



1) If a consumer is denied credit, insurance or employment because of a credit report, he has the right to know which credit-reporting agency made the report, the nature and substance of the report and who has received the report in the past six months (or in

the past two years when employment was denied). He/she is also entitled to know when a credit-reporting agency is conducting an investigation of his/her credit record, the nature and scope of the investigation and the nature and substance of the information collected. This information must be furnished free of charge if requested within thirty days of a denial for credit, insurance or employment, based on the credit report. When no denial has occurred, information can be furnished for a reasonable fee.

2) When inaccurate or obsolete information is found in a credit report the consumer has the right to have the information reinvestigated and removed if it cannot be verified. He/she can also require that the reporting agency report any such corrections to all persons and organizations who previously received an inaccurate report. Credit record information can not be given to anyone who has no business need for the information.

3) When information in the consumer's credit record is in dispute, he/she may have a letter giving his/her side of the dispute placed in the record and a copy of the letter sent to businesses within thirty days of their adverse actions.

Show slide LA-14
Consumer Checklist

CONSUMER CHECKLIST

If you have recently been denied credit, insurance or employment because of a consumer credit report:

DID YOU LEARN the nature and substance of all the information in your file?

DID YOU FIND OUT the names of each of the sources that supplied information on you to the reporting agency?

LA-14

Show slide LA-15
Consumer Checklist
(Continued)

CONSUMER CHECKLIST (Continued)

DID YOU LEARN the names of everyone who received reports on you within the past six months or the last two years?

DID YOU REQUEST the agency to reinvestigate and correct or delete information what was found to be inaccurate, incomplete, or obsolete?

LA-15

Show slide LA-16
Consumer Checklist
(Continued)

CONSUMER CHECKLIST (Continued)

DID YOU FOLLOW-UP to determine the results of the re-investigation?

DID YOU ASK the agency to notify those you name who received reports that certain information was deleted?

LA-16

Show slide LA-17
Consumer Checklist
(Continued)

CONSUMER CHECKLIST (Continued)

DID YOU FOLLOW-UP to make sure that those named by you did in fact receive notices from the consumer reporting agency?

DID YOU DEMAND that your version of the facts be placed in your file if the re-investigation did not settle the dispute?

LA-17

Show slide LA-18
Consumer Checklist
(Continued)

CONSUMER CHECKLIST (Continued)

DID YOU REQUEST the agency to send your statement of the dispute to those you name who received reports containing the disputed information?

LA-18

4) If a consumer's rights under the FCRA are willfully or negligently violated, he/she may sue for damages, and collect legal fees and court costs.

5) The FCRA does not give the consumer the right to have a copy

of, or handle his/her credit file. A consumer does have the right under the act to request information from a credit reporting agency about the nature and substance of his/her report. Nothing in the act requires a federal agency to resolve individual consumer complaints. The act does not apply to transactions involving commercial credit or business insurance.

c. The Fair Credit Billing Act (FCBA) amends the Truth in Lending Act to protect consumers from inaccurate and unfair billing practices by credit card issuers and other "open end" creditors.

Show slide LA-19
Consumer Rights
Under FCBA

CONSUMER RIGHTS UNDER FCBA

* Written notice of rights
* Notice of payment due
* Acknowledgement of written notice of error
* Correction of errors

LA-19

1) This Act requires creditors to inform customers of their rights under the Act.

2) The Act also requires that creditors bill their customers at

least fourteen days before payment must be made to avoid finance charges and requires them to name at least one location where payments will be credited the same day as received.

3) The Act provides that a customer who believes that his or her account contains an error and sends a written notice of the error to the creditor within sixty days after receiving the bill must receive an acknowledgement from the creditor within thirty days.

4) According to the Act the creditor who receives a proper written notice of error must correct the error within two billing cycles or send a written notice to the customer stating that the account is believed to be correct and explaining why.

5) During the resolution time period, the Act provides that the customer is not obligated to pay the disputed amount, but must pay any charges on the account which are not in dispute. Finance charges on disputed amounts need not be paid. The

creditor may not close the account because of the customer's refusal to pay the disputed amount.

6) Failure by the creditor to follow the procedures established by the FCBA results in forfeiture of the disputed amount up to $50 regardless of whether an error has been made.

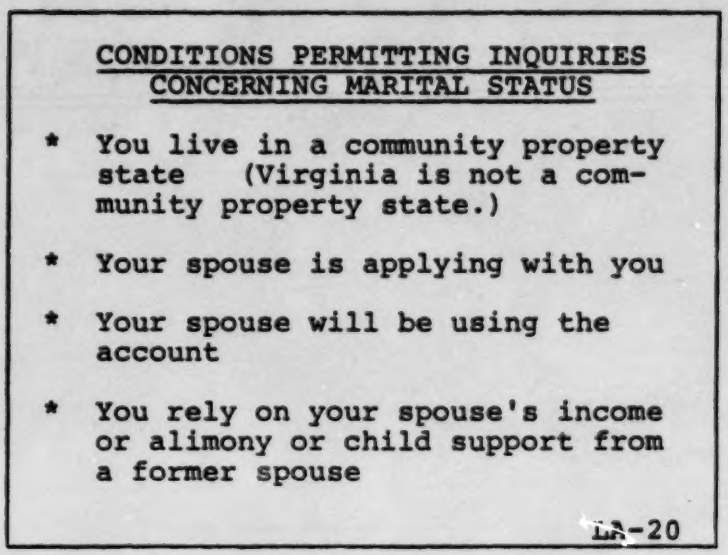
7) The FCBA permits the merchant to offer a five percent discount to induce customers to pay cash rather than use credit cards. This discount does not have to be included in the statement of finance charges required by the Truth in Lending Law.

d. The Equal Credit Opportunity Act (ECOA) prohibits discrimination in any aspect of a credit transaction on the basis of sex, marital status, race, religion, national origin or age. It also prohibits discrimination because income is dependent upon public assistance such as Social Security.

1) Under this Act creditors may not discourage a customer from applying for credit because of sex, marital status, race, religion, national origin or age.

2) Under this Act an applicant for credit cannot be required to supply information regarding sex, race, national origin, or religion, but may voluntarily do so if asked.

Show slide LA-20
Conditions Permitting Inquiries Concerning Marital Status


CONDITIONS PERMITTING INQUIRIES CONCERNING MARITAL STATUS
* You live in a community property state (Virginia is not a community property state.)
* Your spouse is applying with you
* Your spouse will be using the account
* You rely on your spouse's income or alimony or child support from a former spouse
LA-20

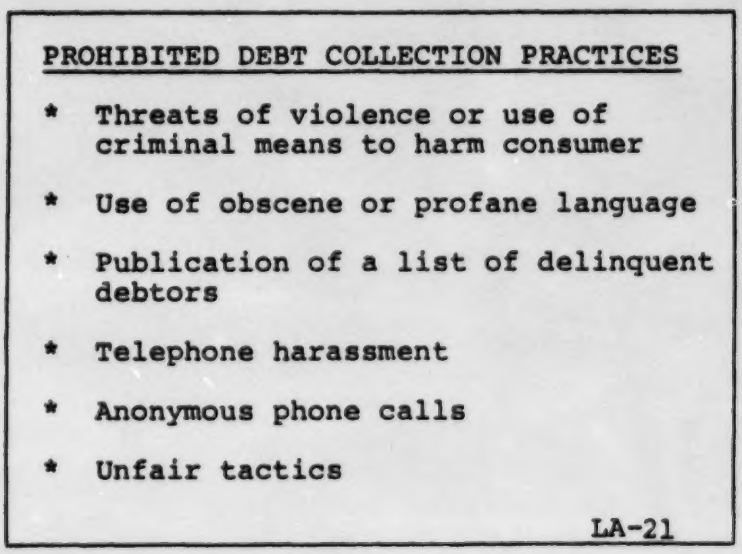
3) The Act does permit inquiries on credit application regarding marital status if the applicant lives in a community property state, the applicant's spouse is a joint applicant, the applicant's spouse will be using the account, or the applicant is dependent on the spouse's or a former spouse's income.

4) The Act prohibits a creditor from asking about any plans the applicant may have for having children.

5) The ECOA does not guarantee that an applicant will get credit. Creditors still have the right to determine credit worthiness on the basis of income, expenses, debts, and reliability.

e. The Debt Collection Practices Act was designed to eliminate abusive debt collection practices by collection agencies or by creditors who collect their own debts under names other than their own. It does not cover lawyers collecting debts.

Show slide LA-21
Prohibited Debt
Collection Practices


PROHIBITED DEBT COLLECTION PRACTICES
* Threats of violence or use of criminal means to harm consumer
* Use of obscene or profane language
* Publication of a list of delinquent debtors
* Telephone harassment
* Anonymous phone calls
* Unfair tactics
LA-21

1) Debt collectors must not abuse consumers by threats of violence or bodily harm, the use of obscene or profane language orally or in writing, or by publication of the

consumer's name on a list of those who have not paid their debts.

2) Debt collectors may not use the telephone to harass consumers by calling them at odd hours or calling them without identifying themselves.

3) Under this Act the amount of the debt to be collected must be the initially agreed-to amount or an amount permitted by law (amount of original debt or court-ordered payment). Where the debt is paid by check or some other payment instrument postdated more than five days, the consumer must be notified in writing of the debt collector's intent to deposit the check or instrument ten days prior to deposit. Postdated checks or other postdated instruments must not be solicited for the purpose of threatening or instituting criminal action. Postdated checks or other postdated instruments must not be deposited or threatened to be deposited prior to the date thereon.

4) Debt collectors are forbidden by this Act to charge any communication regarding the debt to the consumer when the true purpose of the communication is concealed.

5) Debt collectors are also prohibited from taking nonjudicial action or threatening to take nonjudicial action to dispossess or impair property if there is no right to the property through security interest, no intent to take possession of the property, or the property is exempt by law from dispossession or disablement. Example: Threats to take household goods and sell to pay debt when such action was not agreed to when debt was incurred; there is no intention of the company to take household goods; or it is against state law to take such action.

6) The Debt Collection Practices Act provides private right of action to consumers who have been abused by the prohibited debt collection techniques. Action may be brought in any U. S. district court of competent jurisdiction within one year of the date of the violation. Relief accorded by the court may be actual damages up to $1,000 for one individual, or up to $500,000 or one percent of the debt collectors net worth, whichever

is less, in class action suits. Costs of the action, including attorney's fees may also be awarded by the court. If action is brought solely to harass the debt collector, the collector may be awarded attorney's fees relative to the work expended and costs. To be held innocent when a violation has occurred, the debt collector must show by substantial evidence that the violation was not intentional and resulted from a bona fide error.

7. Both the U. S. Postal Service and the Federal Trade Commission have jurisdiction over some areas of mail order commerce.

a. The U. S. Postal Service protects the public against fraud or misrepresentation by mail. Problems involving such fraud or mail-order misrepresentation should be referred to the local postmaster or postal inspector or to the chief postal inspector.

b. The Federal Trade Commission does enforce the Mail-Order Merchandise Trade Regulation Rule. However, the Commission does not

generally intervene in mail-order matters on a case by case basis. It does keep tabs on such complaints. When the volume of complaints alleging rule violations by a specific company indicates widespread violation of the rule, the Commission may initiate an investigation.

Show slide LA-22
Consumer Rights
under FTCMOMR

CONSUMER RIGHTS UNDER
FTC MAIL ORDER MERCHANDISE RULE

Consumers have the right to:

* know when goods are shipped
* cancel an order not shipped within time limits
* receive complete refund on cancelled orders

LA-22

According to this rule, consumers have the right to know when their mail-ordered goods will be shipped. If the seller advertises that goods will be shipped within one week of receipt of the order, they must be shipped within that time. If no shipping time is advertised, the seller must ship the goods within thirty days. When the seller cannot ship within the stated time or thirty days, he/she must give

consumers a chance to cancel their order and get all of their mohey back. The seller must also supply a cost-free method of responding to the notice of inability to ship within time limits. When consumers fail to reply to such a notice and the delay was less than thirty days, the seller can assume that consumers agree to the delay. If the delay is thirty days or more, consumers must give express consent to the delay or the seller must return the consumers' money at the end of the first thirty-day delay. If consumers cancel their order because of delivery difficulties, the seller must return all of their money within seven business days following cancellation. This rule does not apply to: mail order seeds and growing plants; C.O.D. orders; credit orders where the buyer is not charged before the goods are shipped; negative option sales such as book clubs where the buyer agreed in advance to notify the seller that he/she does not intend to buy; services such as mail order photo-finishing; and magazine

subscriptions and other serial deliveries after the initial shipment.

Show slide LA-23
Kinds of Warranties

KINDS OF WARRANTIES

* Full warranty
* Limited warranty
* Implied warranty
* Express warranty

LA-23

8. Warranties can be important aids to consumers in comparing products. Many products are very similar in quality, performance and price so the warranty can become a major factor in determining which item to buy. In order to compare warranties, the consumer must understand the terminology used.

a. A full warranty assures the consumer that the product, if defective, will be repaired or replaced without cost to him, within a reasonable period of time, and without his/her having to do anything unreasonable to obtain service. If a defective product cannot be fixed or has not been fixed after numerous repairs, a full warranty permits the purchaser to choose

to get a new product or his/her money back. A full warranty covers the original purchase and all subsequent buyers for the period of time stated in the warranty. A full warranty may apply to only a part of a product, so consumers should read warranties carefully to be sure exactly what is covered.

b. A limited warranty is a warranty that does not cover everything that a full warranty covers--something is missing. As mentioned, a product may have both a full warranty and a limited warranty. A limited warranty may cover parts, but not labor. Limited warranties sometimes allow only a pro rata refund or credit based on the length of time the consumer has used the product. It may require that the consumer bring the product to the dealer for service, include a charge for handling, or cover only the original purchaser.

c. An implied warranty is created by law rather than by a seller or manufacturer. It becomes effective at the time of sale and is not written.

Even when a seller says nothing about warranties, the implied warranties are automatically in force. The most common implied warranty is the "warranty of merchantability." This warranty assures the consumer that the product he purchases will do what it is intended to do. If it does not, the consumer may be able to get his/her money back. Example: A toaster that won't toast. Another implied warranty is the warranty of fitness for a particular purpose. If the consumer buys a product on the basis of the seller's word that the product will be suitable for use the consumer intends to make of it, a warranty of fitness is established. Example: camper tells salesman that he/she wants a sleeping bag to keep warm in below zero temperatures. The sleeping bag doesn't keep the camper warm. Implied warranties, from a federal point of view, may be limited by sellers to the duration of the limited warranty. However, some states do not permit such limitations.

d. Express warranties are spoken promises made to the consumer by the seller. They can be advertising or a sales pitch and are enforceable under state rather than federal laws.

e. The Magnuson-Moss Warranty Act sets out federal standards for warranties. The Warranty Act requires all warranties to be in easily understood language--no fine print. Every term and condition of the warranty must be spelled out in writing. If you don't see it--you don't get it. Since January, 1977, warranties on consumer products costing more than $15 must be available for consumers to look at before buying. A warranty is part of the "basis of the bargain" when a consumer purchases a product with a warranty. However, companies are <u>not</u> required by the Warranty Act to give warranties.

f. The Magnuson-Moss Warranty Act is enforced by the Federal Trade Commission. The Commission has the responsibility of making sure that warranties say what they are required under the Act to say. Magnuson-Moss is a disclosure act--not a performance

act. If the company does not live up to its warranty, the consumer has a private right of action which means a right to sue.

g. When purchasing items the consumer should review this warranty checklist:

1) Is it "FULL" or "LIMITED"? (Warranties only.)

2) Are all parts of the product covered by the warranty (or service contract)? Would the parts that are not covered be expensive to fix? Are they likely to break?

3) Would you have to pay any of the repair costs?

4) How long does the warranty last?

5) Do you get a different amount of protection for different parts of the product? Or for different periods of time?

6) Is the warranty for just the first purchaser? Are you likely to sell the product, or give it as a gift, during the warranty period?

7) What do you have to do to get warranty service? (Such as mailing or shipping the product somewhere.)

8) Is there anything you have to do to keep the warranty in effect? (Such as proper maintenance.)

9) Does the company giving the warranty have a good (or bad) reputation for living up to its warranty?

h. Warranty problems may be best illustrated by a recitation of a new car buyer's rights under federal and state laws.

Show slide LA-24
New Car Buyer's
Bill of Rights

NEW CAR BUYER'S BILL OF RIGHTS

. . . . By law new cars have an "Implied warranty" to provide safe, efficient, trouble-free transportation.

LA-24

Show slide LA-25
New Car Buyer's
Bill of Rights
(Continued)

NEW CAR BUYER'S BILL OF RIGHTS
(Continued)

. . . . If something is wrong with your car you must give the dealer a "reasonable" number of chances to fix it. (There is one exception, and that is when something major goes wrong during the first few miles.)

LA-25

Show slide LA-26
New Car Buyer's
Bill of Rights
(Continued)

NEW CAR BUYER'S BILL OF RIGHTS
(Continued)

. . . . If the dealer doesn't, or can't, fix the defect within a reasonable time, and the defect "substantially impairs" the car's value, you have a right to demand a replacement, or your money back.

LA-26

Show slide LA-27
New Car Buyer's
Bill of Rights
(Continued)

NEW CAR BUYER'S BILL OF RIGHTS
(Continued)

. . . . Except in the case of full warranties, to get your money back, or a replacement, you must officially give the "lemon" back to the dealer. This procedure is called "Revocation of Acceptance."

LA-27

Show slide LA-28
New Car Buyer's
Bill of Rights
(Continued)

NEW CAR BUYER'S BILL OF RIGHTS
(Continued)

. . . . To "Revoke Acceptance" you should deliver the car to the dealer, give him something, in writing, listing the exact reasons you are returning it, and let him know you are canceling your insurance and registration.

LA-28

Show slide LA-29
New Car Buyer's
Bill of Rights
(Continued)

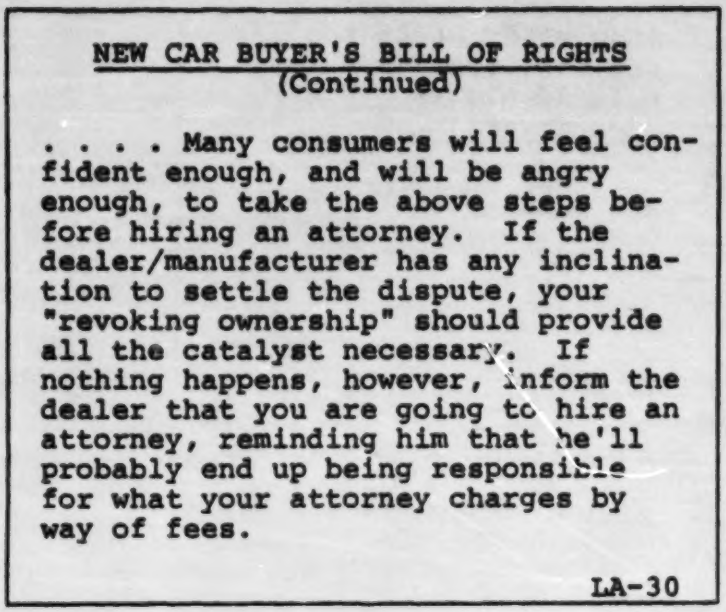
NEW CAR BUYER'S BILL OF RIGHTS
(Continued)

. . . . If you financed your car through the dealer, you should contact the bank or finance company where you make payment to inform them that you'll not be making further payments until the problem is resolved. If you got your loan directly at a bank or credit union, you should let them know where the car is BUT you may wish to continue making those payments to avoid the possibility of being sued for the balance.

LA-29

* TO SAVE REPETITION, THE INFORMATION CONTAINED IN SLIDES LA-24 THROUGH LA-30, NEW CAR BUYER'S BILL OF RIGHTS, IS NOT REPEATED IN THE BODY OF THE MODULE OUTLINE.

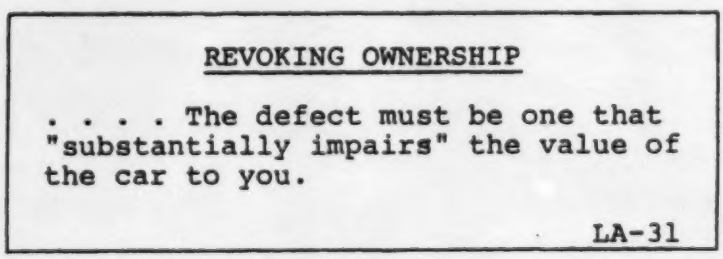
Show slide LA-30
New Car Buyer's
Bill of Rights
(Continued)


NEW CAR BUYER'S BILL OF RIGHTS
(Continued)
. . . . Many consumers will feel confident enough, and will be angry enough, to take the above steps before hiring an attorney. If the dealer/manufacturer has any inclination to settle the dispute, your "revoking ownership" should provide all the catalyst necessary. If nothing happens, however, inform the dealer that you are going to hire an attorney, reminding him that he'll probably end up being responsible for what your attorney charges by way of fees.
LA-30

Cars are the second largest purchase most consumers make and they are deemed to be entitled to protection against defective or dangerous products.

i. If a car doesn't live up to the provisions of it's "limited warranty," and the consumer wishes to revoke ownership, there are five things the consumer will have to show:

Show slide LA-31
Revoking Ownership



Show slide LA-32
Revoking Ownership
(Continued)

REVOKING OWNERSHIP (Continued)

. . . . You must revoke ownership within a reasonable time after the defect is discovered.

. . . . You must give the dealer a reasonable number of chances to fix the defect.

LA-32

Show slide LA-33
Revoking Ownership
(Continued)

REVOKING OWNERSHIP (Continued)

. . . . You must notify the dealer that you are revoking ownership of the car. You should also present the dealer with a list of the exact problems that cause the substantial impairment of value of the car to you so there can be no misunderstanding as to what bothers you.

LA-33

Show slide LA-34
Revoking Ownership
(Continued)

REVOKING OWNERSHIP (Continued)

. . . . Except for the defect that is causing you to revoke, you should be sure that the car is being returned without "substantial change." For example, if a fender was damaged in an accident, and you wanted to revoke ownership for an unrelated engine defect, the dealer might claim that the car was substantially changed. (Normal wear and tear, however, doesn't count.)

LA-34

* TO SAVE REPETITION, THE INFORMATION CONTAINED IN SLIDES LA-31 THROUGH LA-34, REVOKING OWNERSHIP, IS NOT REPEATED IN THE BODY OF THE MODULE OUTLINE.

9. There are a number of market schemes which are patently illegal and which the prudent consumer should be able to recognize immediately.

Show slide LA-35
Market Schemes

MARKET SCHEMES

* Bait and switch
* Pyramid promotion
* Referral selling
* Door-to-door sales

LA-35

a. "Bait and switch" entails an offer (usually by advertisement) to sell certain goods or services, but when consumers try to buy the advertised goods they are either not available or so inferior as to not be suited for the advertised purpose. Under Section 5 of the FTC Act, such practices are defined as unfair and deceptive. For example, when consumers tried to buy some carpet in response to advertisement for three rooms of carpeting for $135, they found it either not available or so "junky" they didn't want it. The switch occurred when the salesman showed the consumer higher priced goods and attempted to switch the purchase from the low cost carpet to a better quality carpet at a much higher price. The scheme relies on the bait to get the consumer to the

store or the salesman in the home. The consumer is then subjected to a high-pressure sales pitch and switches to the more expensive product. Consumers can avoid being victimized by such schemes if they exercise caution when responding to ads for products priced suspiciously low. If the consumer really wants the advertised product he/she should insist upon buying it. If the product doesn't exist and the consumer has reason to believe it has never existed, then this information should be relayed to the Federal Trade Commission. In the past the Commission has issued numerous cease and desist orders involving bait and switch operators.

b. Pyramid promotion schemes consist of any program designed to use a pyramid or chain process by which each participant pays money for the opportunity to receive money or things of value in return for inducing others to become participants in the program. All persons who contrive, prepare, set up, operate, advertise, or promote a

pyramid scheme become guilty, in Virginia, of a misdemeanor.

c. Referral sales contracts are those contracts for the sale or lease of consumer goods where the buyer can earn a rebate or discount based upon the occurrence of another sale or lease subsequent to the agreement. Example: "A" purchases aluminum siding and at the time of purchase gives the salesman the name of "B" who might want to buy siding. An agreement is made that if "B" buys the siding, then "A" will get a rebate or discount. The use of referral sales contracts is prohibited in Virginia.

d. Door-to-door sales are the sale, lease, or rental of consumer goods or services with a purchase price of $25 or more, in which the seller initiates the sale and the buyer agrees to purchase at a place other than the sellers regular place of business. Door-to-door sales do not include: sales previously negotiated at sellers place of business; sales already covered by the Consumer Credit Protection Act, such as home improvements where a lien is placed on

the residence; sales made in emergency situations where the buyer has initiated the contract and has waived his rights in a written statement; sales entirely conducted by mail; sales involving repair on buyer's personal property; or sales dealing with the sale or rental of real property, sale of insurance, or sale of securities or commodities. The door-to-door sales rule requires the seller to display the three-day cancellation provision in bold print on the sales contract and to provide buyers with notices of cancellation which they can mail in to cancel their orders. Such cancellations must be mailed before midnight of the third business day after the sales.

C. Summary and Evaluation

Summary Suggestions

At the end of your presentation you may wish to:

1. Give a general summary.
2. Answer any questions as time allows.
3. Administer a quiz designed to measure the accomplishment of objectives. If a quiz is given, review the answers and explain any areas where there seems to be a marked lack of understanding.
4. If an evaluation form is to be used, it should be distributed and collected at the conclusion of the presentation and questions.

MULTIPLE CHOICE-TRUE/FALSE QUIZ

1. All of the following are basic consumer rights except one:

   a. Right to choose
   b. Right to be informed
   c. Right to safety
   d. Right to a refund

2. Manufacturers have a legal responsibility to:

   a. Evaluate the inherent risks in their products and inform consumers.
   b. Make products completely safe.
   c. Supply potential safety hazard information to the federal government, but are not obligated to inform the consumer.
   d. Falsify information to consumers regarding the evaluation on possible risks of their products.

3. The economics term which refers to the ratio of the percentage of change in quantity (supplied or demanded) to the percentage of change in price is:

   a. Social needs
   b. Laissez-faire
   c. Elasticity
   d. Equilibrium

4. The Truth in Lending Act requires merchants who extend credit:

   a. To disclose the dollar amount of the loan and the financial charge.
   b. To disclose the finance charges as an annual percentage rate.
   c. To itemize all charges, the deferred payment price and the total payment.
   d. All of the above.

5. Under the Truth in Lending Act, a three-day cooling-off period is provided to give the consumer a chance to change his/her mind on any contract which creates a lien on the consumer's:

   a. Automobile
   b. Home
   c. Bank account
   d. Insurance policies

6. According to the Fair Credit Reporting Act, all of the following are correct except one:

   a. The consumer has the right to know which credit-reporting agency issued the adverse report.
   b. The consumer can refute disputed information.
   c. The credit agency is not required to reinvestigate inaccurate information and remove false information from the file.
   d. The Act does not give the consumer the right to have a copy of his or her credit file.

7. The federal legislation which offers protection to consumers from inaccurate and unfair billing practices by credit card issuers and other "open end" creditors is the:

   a. Fair Credit Reporting Act
   b. Fair Labor Standards Act
   c. Equal Credit Opportunity Act
   d. Fair Credit Billing Act

8. The Equal Credit Opportunity Act does not guarantee that an applicant will get credit.

   a. True
   b. False

9. Which of the following practices are prohibited by the Debt Collection Practices Act:

   a. Use of violence or profane language.
   b. Telephone harassment.
   c. Publication of a list of delinquent debtors.
   d. All of the above.

10. The federal legislation which prohibits discrimination in any aspect of a credit transaction on the basis of sex, marital status, race, religion, national origin or age is the:

    a. Fair Credit Reporting Act
    b. Fair Labor Standards Act
    c. Equal Credit Opportunity Act
    d. Fair Credit Billing Act

11. The U. S. Postal Service protects the public against fraud or misrepresentation by mail.

    a. True
    b. False

12. The Mail-Order Merchandise Trade Regulation Rule is enforced by the:

    a. Federal Trade Commission
    b. Federal Bureau of Investigation
    c. Interstate Commerce Commission
    d. Department of Justice

13. A full warranty assures the consumer that the product, if defective, will be repaired or replaced without cost to him, within a reasonable period of time, and without the purchaser's having to do anything unreasonable to obtain service.

    a. True
    b. False

14. A limited warranty is the same as a full warranty, except that the purchaser is required to pay handling and service charges.

    a. True
    b. False

15. When a consumer attempts the purchase of an item advertised for a particular price, and the salesman tells him that the item either is unavailable or so inferior that he should instead buy a better quality item at a higher price, the salesman is engaging in an illegal market scheme called:

    a. Pyramid promotion
    b. Referral selling
    c. Bait and switch
    d. The put-on

Answers: 1-d, 2-a, 3-c, 4-d, 5-b, 6-c, 7-d, 8-a, 9-d, 10-c, 11-a, 12-a, 13-a, 14-b, 15-c.

DISCUSSION QUESTIONS

1. What protection do consumers receive under the Truth in Lending Act?

2. How can an individual challenge a false credit report under the Fair Credit Reporting Act?

3. Explain the difference between a full and a limited warranty.

4. What is an implied warranty?

5. How does the law of supply and demand effect the cost of goods in the marketplace?

6. How does one go about revoking ownership of an automobile?

7. What are the regulations pertaining to telephone harassment by debt collectors?

8. When an item is purchased through the mail, can the purchaser cancel the order if it has not been received within three weeks? Why or why not?

9. What can you do if the car you purchased is a lemon?

10. What is a pyramid promotion scheme?

11. If you purchase aluminum siding for your home from the salesman who came to your house, under what circumstances can you change your mind and cancel the contract?

12. Mr. Smith signs a contract to have a new roof put on his home. What would have to happen to make this a referral sales contract? Are referral sales contracts always legal?

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Truth in Lending, Regulation 2. Amended to March 23, 1977.

Warranties, There Ought to be a Law.